IN THE

# Supreme Court of the United States.

OCTOBER TERM, A. D. 1901.

## No. 79.

| | |
|---|---|
| **PETER AMBROSINI,** *Plaintiff in Error,* vs. **THE UNITED STATES.** *Defendant in Error.* | In Error to the District Court of the United States, for the Northern District of Illinois. |

## STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

This is a test case. Upon the same state of facts, two diametrically opposite judgments have been rendered in two District Courts. In the present case—*U. S.* v. *Ambrosini* (105 Fed., 239)—decided October 27, 1899, District Judge Seaman, sitting in the Northern District of Illinois, decided that a bond executed by a dramshop keeper to a state or municipality, under the law requiring such a bond as a condition precedent to the issuance of a license—must be stamped under the war revenue act of 1898. When the same question arose a few months later in the Eastern District of Missouri, Judge Adams, on March 3, 1900, de-

cided in *U. S.* v. *Owens* (100 Fed., 70) that such a bond need not be stamped. Though Judge Adams makes no reference to the opinion of Judge Seaman, it was brought to his attention during the argument in the *Owens* case. The same question also arose in the Circuit Court of Cook County (*People* v. *City of Chicago*, 31 Chicago Legal News, 247). In that case Judge Tuley decided on March 10, 1899, that the bond need not be stamped, and awarded a mandamus against the City of Chicago to issue a license upon an unstamped bond.

These are the only cases, so far as we can discover, in which a state of facts like that in this record has been passed upon.

This writ of error has been sued out to reverse the judgment of the District Court adjudging the plaintiff in error guilty of an offense under section 7 of the act of Congress, approved June 13, 1898, entitled, "An Act to provide ways and means to meet war expenditures, and for other purposes," otherwise known as the war revenue act of 1898.

The indictment contains two counts. The first charges that the defendant on August 30, 1898, executed a certain bond in the penal sum of $3,000, to the People ot the State of Illinois, without affixing to such bond a 50-cent revenue stamp, alleged to be required by said war revenue act.

The second count charges that the defendant on August 30, 1898, executed a certain bond to the City of Chicago, in the penal sum of $500, without affixing thereto a 50-cent revenue stamp, alleged to be required under said act. (Rec., pp. 1–4.)

A motion to quash the indictment was made (Rec., pp. 5–7), and overruled by District Judge Seaman (Rec., p. 8), and a jury being waived, the cause was submitted to the

court (Rec., p. 8), and the defendant was found guilty and fined $25. (Rec., p. 9.) The opinion of Judge Seaman is on page 7 of the record and is reported in 105 Fed., 239.

The errors assigned, among others, are that the District Court erred: (*a*) in overruling the motion to quash the indictment; (*b*) in overruling the motion in arrest of judgment; (*c*) in finding the defendant guilty; (*d*) in not holding that part of the act of Congress, approved June 13, 1898, under which the defendant was convicted, unconstitutional; (*e*) and in holding that the acts charged in the indictment came within section 7 of said act. (Rec., p. 11.)

# BRIEF.

## I.

THE BONDS IN QUESTION ARE EXPRESSLY EXEMPTED FROM TAXATION BY SECTION 17 OF THE WAR REVENUE ACT OF JUNE 13, 1898.

30 U. S. Statutes at Large, p. 455, Sec. 17.

(*a*) The war revenue act of June 13, 1898, must be strictly construed as against the government.

*United States* v. *Isham*, 17 Wall., 496, 504.

*Hartranft* v. *Wiegmann*, 121 U. S., 609, 616.

*American Net & Twine Co.* v. *Worthington*, 141 U. S., 468, 474.

*Hugus* v. *Strickler*, 19 Ia., 413, 416.

Ash's Annotated Internal Revenue Laws, p. 360, note C.

(*b*) There are exempted by necessary implication those cases to which the statute cannot constitutionally apply.

Endlich on the Interpretation of Statutes, p. 247, Sec. 179.

*Opinion of Justices*, 41 N. H., 553.

*Prather* v. *Pritchard*, 26 Ind., 65.

## II.

THE BONDS IN QUESTION ARE EXACTED IN FAVOR OF THE PEOPLE BY THE LAWS AND ORDINANCES REGULATING THE SALE OF INTOXICATING LIQUORS, AND ARE THEREFORE INSTRUMENTALITIES OF THE STATE.

*United States* v. *Owens*, 100 Fed., 70.

*Daly* v. *Chicago*, 31 Chicago Legal News, 247.

And authorities cited under Point III, *infra*.

(*a*) The state has the supreme and absolute control of the issuing and granting of licenses, for the sale of intoxicating liquors within its borders, unhampered by restrictions of the Federal government.

*License Cases*, 5 How., 504, 574.
*Mugler* v. *Kansas*, 123 U. S., 623.
*Kidd* v. *Pearson*, 128 U. S., 1, 16.
*Giozza* v. *Tiernan*, 148 U. S., 657, 662.
*In re Hoover*, 30 Fed. Rep., 51.

(*b*) The war revenue act of June 13, 1898 imposes excise taxes on *transactions*, irrespective of who in the first instance is required to pay the same.

*Telegraph Co.* v. *Texas*, 105 U. S., 460.
*Nicol* v. *Ames*, 173 U. S., 509.
*Jones* v. *Estate of Keep*, 19 Wis., 390.

## III.

A STATE HAS NO POWER, EITHER DIRECTLY OR INDIRECTLY, BY TAXATION OR OTHERWISE, TO INTERFERE WITH ANY OF THE MEANS, INSTRUMENTALITIES OR AGENCIES USED BY THE FEDERAL GOVERNMENT IN THE EXERCISE OF ITS SOVEREIGN POWERS.

*McCulloch* v. *Maryland*, 4 Wheat., 316.
*Weston* v. *Charleston*, 2 Peters, 449.
*Dobbins* v. *Commissioners*, 16 Peters, 449.
*Telegraph Co.* v. *Texas*, 105 U. S., 460, 466.
*Palfney* v. *Boston*, 101 Mass., 329.
*Newark* v. *Assessor*, 30 N. J. L., 13, 17.
*Nave* v. *King*, 27 Ind., 356.
1 Desty on Taxation, p. 73.

CONVERSELY, THE FEDERAL GOVERNMENT CANNOT INTERFERE, BY TAXATION, WITH THE MEANS, INSTRUMENTALITIES OR AGENCIES USED BY THE STATE IN THE EXERCISE OF ITS SOVEREIGN POWERS.

*Collector* v. *Day*, 11 Wall., 113.
*U. S.* v. *Railroad Co.*, 17 Wall., 327.
*State* v. *Garton*, 32 Ind., 6.
*Warren* v. *Paul*, 22 Ind., 281.
*Sayles* v. *Davis*, 22 Wis., 217.
*Fifield* v. *Close*, 15 Mich., 505.
*McGovern* v. *Hoesback*, 53 Pa., 176.
*Sampson* v. *Barnard*, 98 Mass., 359.
*Starneman* v. *Smith*, 100 Fed. Rep., 600.
*Warwick* v. *Bettman*, 102 Fed. Rep., 127, affirmed 108 Fed. Rep., 46, 6th C. C. A.
*U. S.* v. *Owens*, 100 Fed., 70.
*Daly* v. *Chicago*, 31 Chicago Legal News, 247.

## ARGUMENT.

### I.

THE BONDS IN QUESTION ARE EXPRESSLY EXEMPTED FROM TAXATION BY SECTION 17 OF THE WAR REVENUE ACT OF JUNE 13, 1898.

The question before the court involves the construction of sections 7, 17 and a part of schedule "A" of the war revenue law of 1898. The bonds in question are given pursuant to the laws of the State of Illinois and the ordinances of the City of Chicago.

Section 7 of the war revenue act of 1898, under which this defendant was indicted, is as follows:

"Sec. 7. That if any person or persons shall make, sign or issue, or cause to be made, signed or issued, any instrument, document, or paper, of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, and without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document or paper as aforesaid shall not be competent evidence in any court."

Section 17, under which we contend that the bonds in question are exempted, is as follows:

"Sec. 17. That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States government, or by the officers of any state, county, town, municipal corporation or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this act: Provided, *that it is the intent hereby to exempt from stamp taxes imposed by this act, such state, county, town, or other municipal corpora-*

*tions in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing or municipal capacity;* Provided further, that stock and bonds issued by co-operative building and loan associations whose capital stock does not exceed ten thousand dollars, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided."

The first proviso in the above section clearly shows that Congress recognized the constitutional limitations upon the Federal government to interfere by taxation, with state or municipal functions of government, or any of their agencies, or instrumentalities, by exempting "from the stamp taxes imposed by this act" bonds required and used by the state in the exercise of its functions of sovereignty, viz., that of the collection of revenue and that of the enforcement of the police power of the state.

The proviso in question is substantially like that contained in the revenue act of 1864 (13 Stat. at Large, 258).

It was contended below that the bonds in question are liable to taxation by virtue of a certain part of schedule "A," section 25, which is as follows:

"Bond: For indemnifying any person or persons, firm or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, *and all other bonds of any description*, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents."

It was urged that the bonds in question are subject to taxation under the phrase "all other bonds of any description." It is submitted that this general clause includes only such bonds as Congress has the right to legally tax. It will not be presumed that Congress intended to include in the above general clause a subject of taxation which it had no constitutional power to tax.

9

A

THE WAR REVENUE ACT OF JUNE 13, 1898, SHOULD BE STRICLTY CONSTRUED AS AGAINST THE GOVERNMENT.

It is well settled that the stamp laws, being in restraint of common right, should receive a strict construction.

In *United States* v. *Isham*, 17 Wall., 496, 504, the court in construing the revenue act of June 30, 1864 (13 Stat. at Large, p. 298, amended July 13, 1866, 14 Stat. at Large, 144), said:

"If there is a doubt as to the liability of an instrument to taxation the construction is in favor of the exception because * * * a tax cannot be imposed without clear and express words for that purpose."

This doctrine was reaffirmed by this court in *Hartranft* v. *Wiegmann*, 121 U. S., 609,616, and *American Net & Twine Co.* v. *Worthington*, 141 U. S., 468,474.

In *Hugus* v. *Strickler*, 19 Ia., 413, 416, the court, in construing the same act, said:

"The recognized rule of construing penal statutes strictly, *and giving a liberal interpretation to words of exception contained therein*, should, in our opinion, be applied to our stamp laws. They are directly penal and clearly in restraint of common right."

In Ash's Annotated Internal Revenue Laws, p. 360, note C, the author lays down the same rule in similar language, and supports the same by numerous authorities.

## B.

THERE IS EXCEPTED BY NECESSARY IMPLICATION THOSE CASES TO WHICH A STATUTE CANNOT CONSTITUTIONALLY APPLY.

In Endlich on the Interpretation of Statutes, Sec. 179, p. 247, it is said:

"'It is a safe and wholesome rule to adopt the restricted construction of a statute, when a more liberal one will bring us in conflict with the fundamental law;' indeed to regard as excepted by necessary implication from even the most express and absolute general provisions all cases to which a statute cannot constitutionally apply."

In Opinion of Justices, 41 N. H., p. 553, in response to a request of the state legislature to give their opinion upon the constitutionality of an act entitled "An Act to secure freedom and the rights of citizenship to persons in this state," the Supreme Court of New Hampshire said:

"If the act would constitutionally apply to a large class of cases that do and will exist, it would not be rendered unconstitutional by the fact that, *literally construed*, its language might be broad enough to extend to a few exceptional cases where it could not constitutionally apply; *since upon settled principles of construction, the latter are as fully and effectually excepted by necessary implication, as if the statute had contained an express proviso that it should not extend or apply to such cases.* The rule of construction universally adopted is, that when a statute may constitutionally operate upon certain persons, or in certain cases, and was not evidently intended to conflict with the constitution, it is not to be held unconstitutional merely because there may be persons to whom or cases in which it cannot constitutionally apply; but it is to be deemed constitutional, and to be construed not to apply to the latter persons or cases, on the ground that courts are bound to presume that the legislature did not intend to violate the constitution."

In *Prather* v. *Pritchard*, 26 Ind., 65, the court had under consideration schedule B of the revenue act of June 30, 1864 (13 Stat. at Large, p. 298). The question in that case was whether or not a notarial certificate attached to a deposition was included in the designation, "certificate of any other description than those specified." The court held that though the language quoted was broad enough to include the certificate in question, still it was of the opinion that it was not the intention of Congress to impose a tax on such certificate as it was used in a legal proceeding.

## II.

THE BONDS IN QUESTION ARE REQUIRED BY THE LAWS AND ORDINANCES REGULATING THE SALE OF INTOXICATING LIQUORS AND ARE THEREFORE INSTRUMENTALITIES OF THE STATE.

If it could be successfully contended that the phrase "all other bonds of any description," as used in schedule "A," is broad enough to and does include bonds exacted by the state and municipality in the administration of the liquor laws, and that the same are not exempt under section 17 above quoted, then such tax is unconstitutional, for the reason that it unlawfully interferes with the state and municipality in the exercise of governmental functions.

The giving of the bonds by the applicant for a liquor license is expressly made a condition precedent to the granting of the license.

## A.

THE STATE HAS THE SUPREME AND ABSOLUTE CONTROL OF THE ISSUING AND GRANTING OF LIQUOR LICENSES FOR THE SALE OF INTOXICATING LIQUORS WITHIN ITS BORDERS UNHAMPERED BY RESTRICTIONS OF THE FEDERAL GOVERNMENT.

That the state has absolute and complete control of the sale of intoxicating liquors within its borders, and has the right to grant licenses upon such terms and conditions as it sees fit to impose, free from restrictions of the Federal government, cannot be controverted.

In License Cases, 5 How., 504, the court (TANEY, C. J.), in discussing the power of the state to regulate and control the liquor traffic, said on page 574:

"It is equally clear that the power of Congress over the subject does not extend further than the regulation of commerce with foreign nations and among the several states; and that beyond these limits, the states have never surrendered their power over trade and commerce, and may still exercise it, *free from any controlling power on the part of the general government.* Every state, therefore, may regulate its own internal traffic, according to its own judgment and upon its own views of the interest and well-being of its citizens."

And again on page 577:

"If any state deems the retail and internal traffic in ardent spirits injurious to its citizens, and calculated to produce idleness, vice or debauchery, I see nothing in the constitution of the United States to prevent it from regulating and restraining the traffic, or from prohibiting it altogether."

This doctrine is approved and upheld in *Mugler* v. *Kansas*, 123 U. S., 623; *Kidd* v. *Pearson*, 128 U. S., 116, and *Giozza* v. *Tiernan*, 148 U. S., 657, 662.

In the case of *In re Hoover*, 30 Fed. Rep., 51, 55, the court in discussing the power of the state to regulate the liquor traffic, said:

"Now, if the state may prohibit the sale of liquor altogether, since it is clearly not a 'privilege or an immunity' in the meaning of the constitution, may it not authorize the sale on such terms, by such persons, and at such places as it thinks proper? * * * This power is inseparable from the sovereignty of the state. The powers of the courts of the general government have nothing to do with it. It is a local regulation, and relates exclusively to the internal police of the state."

In pursuance of this power, laws and ordinances have been passed by the legislature of Illinois and by the municipal government of Chicago, respectively regulating the sale of and traffic in intoxicating liquors.

Under section 1 of article 9 of the constitution of Illinois, among other things it is provided:

"The General Assembly shall have power to tax * * * liquor dealers," etc.

1 Starr & Curtis's Ann. Stats. of Illinois, p. 165, 2nd Ed.

Under paragraph 63 of article 5, chapter 24, of the statutes of Illinois, concerning cities (1 Starr & Curtis's Annotated Statutes of Illinois, p. 689, 2nd Ed.), it is provided:

"Par. 63, Sec. 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers: * * *

"Licenses—*Fourth.* To fix the amount, terms and manner of issuing and revoking licenses. * * *

License, Regulate and Prohibit Sale of Intoxicating Liquor—*Forty-sixth.* To license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such

license: * * * provided, further, that in granting licenses, such corporate authorities shall comply with whatever general law of the state may be in force relative to the granting of licenses. * * *

* * * *Ninety-sixth.* To pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted to cities or villages, with such fines or penalties as the city council or board of trustees shall deem proper."

In 2 Starr & Curtis's Annotated Statutes of Illinois, Chap. 43, p. 1586, 2nd Ed., being the act regulating dramshops, it is provided by Sec. 1:

"That a dramshop is a place where spirituous or vinous or malt liquors are retailed by less quantity than one gallon, and intoxicating liquors shall be deemed to include all such liquors within the meaning of this act."

Sec. 2 provides:

Whoever, not having a license to keep a dramshop, shall, by himself or another, either as principal, clerk or servant, directly or indirectly, sell any intoxicating liquor in any less quantity than one gallon, or in any quantity to be drank upon the premises, or in or upon any adjacent room, building, yard, premises or place of public resort, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100), or imprisoned in the county jail not less than ten nor more than thirty days, or both, in the discretion of the court.

Sec 5 provides:

"*No person shall be licensed to keep a dramshop* or to sell intoxicating liquors by any county board, or *the authorities of any city*, town or village, *unless he shall first give bond in the penal sum of* $3,000, *payable to the People of the State of Illinois*, with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the officer who may be authorized to issue the license, conditioned that he will pay to all persons all damages that they may sustain either in person or property, or means of support, by reason of the person so obtaining a license selling or

giving away intoxicating liquors. The officer taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant."

The Revised Code of Chicago, 1897, Vol. 1, Chap. 39, section 1175, provides:

"The mayor of the City of Chicago shall, from time to time, grant licenses for the keeping of dramshops within the City of Chicago to persons who shall apply to him in writing therefor, and shall furnish evidence satisfying him of their good character. *Each applicant shall execute to the City of Chicago a bond*, with at least two sureties, to be approved by the city clerk or city collector, in the sum of five hundred dollars, *conditioned that the applicant shall faithfully observe and keep all ordinances* in force at the time of the application or thereafter to be passed during the period of the license applied for, and will keep closed on Sundays all doors opening out upon any street from the bar or room where such dramshop is to be kept; and that all windows opening upon any street from such bar or room shall, on Sundays, be provided with blinds, shutters or curtains, so as to obstruct the view from such street into such room. *No application for a license shall be considered until such bond shall have been filed.*"

The conditions of the bond in the sum of $3,000 to the People of the State of Illinois are substantially in the words of the statute (Rec., 14).

The conditions of the saloon bond, in the sum of $500, to the City of Chicago, are even stronger and more comprehensive than the language of the Municipal Code. (Rec., 3.)

It is thus apparent that these bonds are required by

and given in pursuance of the laws and ordinances regulating dramshops. Their purpose is to insure to the people of the state a means for the proper enforcement of the dramshop laws, and with the added guaranty of two resident sureties insure a prompt payment of all fines and penalties imposed for violations of the liquor laws. They furnish also a remedy for those who are damaged either in person or property, or means of support, through the sale of intoxicating liquors, and are a powerful means to compel the dramshop keeper to respect and obey the law. They are conditioned for a due observance of all laws and ordinances respecting dramshops. The sale of intoxicating liquor may be productive of evil results, and may be the cause of an increase of crime, pauperism, idleness and vice. It is, therefore, necessary, for the protection of the people, that the legislature should make regulations and impose conditions upon the granting of dramshop licenses. This legislation is an exercise of the police power for the safety, welfare and health of the community. What conditions shall be imposed upon the issuance of dramshop licenses rests within the discretion of the legislature. The legislature has seen fit to require the applicant for a dramshop license to tender a bond to the state before a license can be obtained. The giving of the bond is a condition precedent to the issuing of a license. The bond is given as a protection to the public against the evils which result from the liquor traffic, and runs in favor of the people, and in case of breach is enforcible in the name of the people. It cannot be disputed that the granting of a license is the exercise of a governmental function which it is beyond the power of the Federal government to tax. The application for a license and the granting of the same by the state constitute a

contract between the state and its licensee. The bond is therefore as much a part of the contract as is the license, it being a condition precedent to the granting of the license. They are part and parcel of the same transaction. If the license is exempt from taxation, the bond which is a part of the license and which is just as essential to the proper regulation of the liquor traffic as the license, is exempt, upon the same grounds. But even if the bond could not be considered a part of the license, the fact would remain that the bonds are required by the state in the exercise of its police power in controlling and regulating what is commonly regarded as a dangerous business.

In *United States* v. *Owens*, 100 Fed., 70, Judge Adams in the Eastern District of Missouri, in a case precisely like the one at bar, said:

"The act of Missouri referred to in the condition of the bond is a recognition of a well-known fact, of which courts may properly take judicial cognizance, that the liquor traffic is an evil which cannot be suppressed, but which may be regulated and kept within less harmful limits. * * * Upon the execution of such a bond, a license is granted by the state. This legislation is one of the highest expressions of the exercise of the police power of sovereignty residing in the state. It deals with a subject intimately related to the health, welfare and safety of the people, and is the subject-matter of exclusive cognizance by the state, with the exercise of which, outside of certain limitations not necessary to be now stated, the Federal government cannot interfere. *Mugler* v. *Kansas*, 123 U. S., 623.

In this legislative scheme the giving of the bond is a condition to the granting of the license. The license itself does not express the entire contract between the state and the dramshop keeper. It is only that term of the contract expressive of the act of the state,. The other term is found in the bond itself, which expresses the assent of the applicant for the license, to the condition imposed by the state. The

two, taken together, constitute the contract or license, with all its limitations and conditions. * * *

*The proposition that the saloon business is not itself a governmental agency may readily be conceded, but it does not follow, and cannot be true, that the means adopted by the state for the regulation of this business, in the way of throwing safeguards about it for the public welfare, are not governmental agencies. They in my opinion clearly fall within the reserved power of the state to legislate in the exercise of its police power for the safety, welfare and health of the community, and as such are not taxable by the federal government.*

It is conceded that the state's license to a dramshop keeper cannot be taxed. This concession, in my opinion, ends the case. The bond, as already seen, is a part of the license; it is the assent to the condition on which the license is granted; it is the agreement of the party of the second part to the terms of the grant; it is a compliance with the provisions of the act of the state, to furnish security for the safe conduct of a dangerous business. But whether the bond be treated as a part of the license or not, it must, in my opinion, be regarded as a means or instrumentality employed by the state in the execution of one of its most important functions, namely, preserving the peace, and enforcing its laws relating to the health, safety and morals of its citizens, and as such cannot, on the authority of cases cited, be the subject of taxation by the federal government."

In *People ex rel. Daly* v. *City of Chicago*, 31 Chicago Legal News, 247, Judge Tuley, of the Circuit Court of Cook County, Illinois, had under consideration the question here in controversy. In that case it was held that the state could not refuse to issue a license because a revenue stamp had not been affixed to the bond required by the laws and ordinances of the state and municipality as a condition precedent to the issuance of a dramshop license. The court said;

"The attempt on the part of the national government to exact a stamp tax of fifty cents upon the bond is an unwarrantable interference with the internal government of the

City of Chicago and State of Illinois; in other words, with the exercise of state sovereignty.

The power of taxation in the United States government is a limited power, and a recognized limitation is, under the authorities, that it cannot, by any kind of taxation, stamp or other tax, interfere with or burden the carrying on of either state or municipal governments, exercising the sovereign power of the state. It is no answer to say that this is not a tax on the state, or a tax on the city, or upon any state or city official, and that there is no prohibition in the internal revenue law as to the actions and as to the conduct of the state or city officials in the premises; but the internal revenue law does say to the citizens—this revenue act, imposing the fifty-cent tax, does interfere with the working of the state and municipal machinery. It says to the citizen, you shall not receive a license from the state or municipality for the carrying on of your business, although you may have complied with all state and municipal regulations, until you have first complied with the United States law by placing a revenue stamp on your bond. If the United States government can impose a tax of fifty cents on a bond as a condition precedent to the citizen receiving a license, it can impose a tax of $5,000 on each bond, or any other sum that Congress may deem proper to impose, and may make it so burdensome upon the applicant for a license as to prevent the state exercising its sovereign power of licensing occupations or business for police or revenue purposes."

## B.

THE WAR REVENUE ACT OF JUNE 13, 1898, IMPOSES EXCISE TAXES ON TRANSACTIONS, IRRESPECTIVE OF WHO IN THE FIRST INSTANCE IS REQUIRED TO PAY THE SAME.

It may be suggested here as it was in the court below that, inasmuch as the stamp tax is required to be paid in the first instance by the person executing the bond, and placed thereon before the same is tendered, the tax is laid, not upon the bond but upon

the individual who gives the bond; in other words, that the bond does not become an instrumentality of government until the stamp has been placed thereon. If the taxes in question were imposed upon the individual who gives the bond, there might be some force to this contention. But the stamp tax is neither a property nor a capitation tax, and cannot be constitutionally so regarded, as it would violate the constitutional provisions as to uniformity of taxation. The tax is laid upon the transaction and affects all parties to it, irrespective of who in the first instance is required to pay it.

In *Telegraph Co.* v. *Texas*, 105 U. S., 460, this court said:

"Where the burden of a tax falls on a thing which is the subject of taxation, the tax is to be considered as laid on the thing rather than on him who is charged with the duty of paying it into the treasury."

In *Nichol* v. *Ames*, 173 U. S., 509, this court had under consideration section 6 and a part of schedule "A" of the war revenue act of 1898, which imposed a stamp tax "on memorandums or agreements of sale made at any exchange or board of trade." It was contended that the tax was a direct tax, and therefore illegal, because not apportioned as required by the constitution. It was held, however, that the tax was not a direct tax, but was a tax upon the transaction itself, and therefore affected all parties to it.

In *Jones* v. *Estate of Keep*, 19 Wis., 390, the court in discussing the power of Congress to impose a tax on judicial process issued by the state courts said:

"It has been suggested that this tax upon state process might be sustained on the ground that it was really a tax upon the party appealing to the court for redress. He is undoubtedly the person most immediately interested in

the judicial proceedings, and the tax is paid by him. But this circumstance does not render the tax any the less obnoxious to the objection taken to it. It is still a direct tax upon the means employed by the state courts to administer justice."

## III

### A.

A STATE HAS NO POWER, EITHER DIRECTLY OR INDIRECTLY, BY TAXATION OR OTHERWISE, TO INTERFERE WITH ANY OF THE MEANS, INSTRUMENTALITIES OR AGENCIES USED BY THE FEDERAL GOVERNMENT IN THE EXERCISE OF ITS SOVEREIGN POWERS

The bonds in question being part of the machinery adopted by the state and the municipality for the proper enforcement of the dramshop laws, they are therefore instrumentalities of government which it is beyond the power of Congress to impede or interfere with by taxation or otherwise. It has been the established law of this country, ever since the decision of Mr. Chief Justice MARSHALL in *McCulloch* v. *Maryland*, 4 Wheat., 316, which decision has been followed by an unbroken line of authorities down to the present time—that it is beyond the power of the state to interfere by taxation or otherwise with the instrumentalities adopted by the Federal government in the exercise of its sovereign powers.

On page 431 of the opinion the Chief Justice said:

"That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect

to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.

* * * * *

"If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the states.

* * * * *

"The result is a conviction that the states have no power by taxation or otherwise to retard, impede, burden or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."

In *Weston* v. *City Council of Charleston*, 2 Peters, p. 449, Mr. Chief Justice MARSHALL, in denying the power of the City of Charleston to impose a tax upon stock issued for loans made to the United States, on page 464 said:

"The stock it issues is the evidence of a debt created by the exercise of this power. *The tax in question is a tax upon the contract subsisting between the government and the individual. It bears directly upon that contract, while subsisting and in full force.* The power operates upon the contract the instant it is framed, and must imply a right to affect that contract.

"If the states and corporations throughout the Union possess the power to tax a contract for the loan of money, what shall arrest this principle in its application to every other contract? What measure can government adopt which will not be exposed to its influence?"

In *Dobbins* v. *Commissioners*, 16 Peters, 435, the court denied the power of the county commissioners of a state to levy a tax on an officer of the United States on the in-

come of his office. In that case it was contended, inasmuch as the tax was laid on the income of the officer, that the tax was a personal charge, and was, therefore, not laid upon an instrumentality of government. In answering this contention, the court, on page 446, used the following language:

"* * * And the only sense in which a tax is a personal charge is, that it is assessed upon personal estate, and the profits of labor and industry. It is called a personal charge, to distinguish such a tax from the tax upon lands and tenements, which are enforced without any regard to the persons who are the owners. Taxes are never assessed, unless it be a capitation tax, upon persons as persons, but upon them on account of their goods, and the profits made upon professions, trades and occupations."

And again on page 448 it was said:

"Congress has power to lay and collect taxes, duties, imposts, etc., and to regulate commerce with foreign nations and among the several states, and with the Indian tribes. Neither can be done without legislation. A complicated machinery of forms, instruments, and persons, must be established; revenue districts were to be designated; collectors, naval officers, surveyors, inspectors, appraisers, weighers, measurers and gaugers must be employed; 'the better to secure the collection of duties on goods and on the tonnage of vessels,' revenue cutters, and officers to command them, are necessary. The latter are declared to be officers of the customs, and they have large powers and authority. All of this is legislation by Congress to execute sovereign powers. They are the means necessary to an allowed end; the end, the great objects which the constitution was intended to secure to the states in their character of a nation. Is the officer, as such, less a means to carry into effect these great objects than the vessel which he commands, the instruments which are used to navigate her, or than the guns put on board to enforce obedience to the law. These inanimate objects, it is admitted, cannot be taxed by a state, because they are means. Is not the officer more so who gives use

and efficacy to the whole? Is not compensation the means by which his services are procured and retained? * * * *To allow such a right of taxation to be in the states would also in effect be to give the states a revenue out of the revenue of the United States, to which they are not constitutionally entitled, either directly or indirectly; neither by their own action, nor by that of Congress.*"

In *Telegraph Co.* v. *Texas*, 105 U. S., p. 460, the court had under consideration a law of the State of Texas which imposed a tax on telegraph messages. The court, by Mr. Chief Justice WAITE, on page 466 said:

"As to the government messages, it is a tax by the state on the means employed by the government of the United States to execute its constitutional powers, and therefore void. It was so decided in *McCulloch* v. *Maryland* (4 Wheat., 316), *and has never been doubted since.*"

In *Palfney* v. *City of Boston*, 101 Mass., 329, the defendant, who was engaged in the business of selling internal revenue stamps procured by him of the government of the United States, was sued by the City of Boston for the amount of a tax which was assessed upon his stock in trade. The court decided that the stamps in question were not subject to taxation, and said, page 333:

"The property which constituted the stock in trade of the planitiff, and upon which the tax was imposed, consisted entirely of internal revenue stamps. These are instruments of the general government for the performance of its legitimate functions. They themselves represent the tax which that government levies upon the business of the community, for its own support. They are the drafts by which that tax is received in advance, and the vouchers by which its payment is made manifest. It is their capacity to answer these purposes which gives them value as property. They have no value otherwise. We think it clear, therefore, that as property, they are exempt from all state and local taxation."

In *Newark City Bank* v. *The Assessor*, 30 N. J. L., p. 13,

it was held that bonds issued by the United States were not subject to taxation by a state in the hands of individuals. The court, on page 17, said:

"It cannot be taxed at all because it is the contract of the national government, which, as to this, is paramount to that of the state over the same citizens. *A taxation of the contract is an indirect taxation of the parties to it.*"

In *Nave* v. *King*, 27 Indiana, p. 356, it was held that county orders issued in payment of soldiers' bounties were not required to be stamped. The court on page 359 said:

"It is claimed that the county orders are void because they were issued without a revenue stamp. It never was claimed by the government that such orders were embraced in any revenue law of Congress and by the act of July 13, 1866, it is expressly provided 'that all official instruments, documents, and papers issued by the officers of the United States government, or by the officers of any state, county, town, or other municipal corporation, shall be, and hereby are, exempt from taxation; *provided*, that *it is the intent hereby to exempt from liability to taxation such state, county, town, or other municipal corporation, in the exercise only of functions strictly belonging to them in their ordinary governmental and municipal capacity.*' Acts 1st Sess. 39th Cong., 147."

## B.

### CONVERSELY, THE FEDERAL GOVERNMENT CANNOT INTERFERE, BY TAXATION, WITH THE MEANS, INSTRUMENTALITIES OR AGENCIES USED BY THE STATE IN THE EXERCISE OF ITS SOVEREIGN POWERS.

The converse of the rule, which inhibits the states from interfering with the machinery of the Federal government, is equally true as applied to the operations of the state governments. The Federal government cannot interfere with the state governments by imposing a tax on the means

and methods adopted by the states for the proper enforcement of their laws.

In *Collector* v. *Day*, 11 Wall., p. 113, Mr. Justice Nelson in discussing the power of Congress to impose a tax on a salary of an officer of a state, after a review of the cases, said on page 124 *et seq.:*

"And we shall now proceed to show that, upon the same construction of that instrument, and for like reasons, that government is prohibited from taxing the salary of the judicial officer of a state. * * * The constitution guarantees to the states a republican form of government and protects each against invasion or domestic violence. Such being the separate and independent condition of the states in our complex system, as recognized by the constitution, and the existence of which is so indispensable that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the *means* and *instrumentalities* employed for carrying on the operations of their governments, for preserving their existence, and fulfilling the high and responsible duties assigned to them in the constitution, should be left free and unimpaired, should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax.

* * * * *

The two governments are upon an equality, and the question is whether the power 'to lay and collect taxes' enables the general government to tax the salary of a judicial officer of the state, which officer is a means or instrumentality employed to carry into execution one of its most important functions, the administration of the laws, and which concerns the exercise of a right reserved to the state? * * * In respect to the reserved powers, the state is as sovereign and independent as the general government. *And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are, necessarily, and, for the sake of self-*

*preservation, exempt from taxation by the states, why are not those of the states depending upon their reserved powers, for like reasons, equally exempt from Federal taxation?* Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

This doctrine was approved and applied in *Pollock* v. *Farmers' Loan and Trust Co.*, 157 U. S., 489, 584, where the court said:

"As the states cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the constitution to tax either the instrumentalities or the property of a state.

A municipal corporation is the representative of the state and one of the instrumentalities of the state government. It was long ago determined that the property and revenues of municipal corporations are not subjects of Federal taxation. *Collector* v. *Day*, 11 Wall., 113, 124; *United States* v. *Railroad Co.*, 17 Wall., 322, 332. In *Collector* v. *Day* it was adjudged that Congress had no power even by an act taxing all incomes to levy a tax upon the salaries of judicial officers of a state, for reasons similar to those on which it had been held in *Dobbins* v. *Commissioners*, 16 Pet., 435, that a state could not tax the salaries of officers of the United States."

In *United States* v. *Railroad Company*, 17 Wall., 322, the court, in discussing the power of Congress to impose

a tax upon an instrument evidencing a debt due the City of Baltimore, on page 327 said:

"The right of the states to administer their own affairs through their legislative, executive and judicial departments, in their own manner, through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and *instruments*, from the taxing power of the Federal government. If they may be taxed lightly, they may be taxed heavily; if justly, oppressively. Their operation may be impeded and may be destroyed, if any interference is permitted. Hence, the beginning of such taxation is not allowed on the one side, is not claimed on the other.

* * * * *

A municipal corporation like the City of Baltimore is a representative not only of the state, but is a portion of its governmental power. It is one of its creatures, made for a specific purpose, to exercise within a limited sphere the powers of the state."

In *State* v. *Garton*, 32 Ind., p. 1, it was held that Congress had no power to impose a tax on the official bond given by an officer of the state to secure a faithful performance of his duty. Said the court, on page 3:

"If a state is to exist as a sovereign, it must of necessity have the power to select its agents to execute its laws, and must be empowered to exact from them such pledge for the faithful discharge of their duties as may seem best calculated to secure their performance. In exacting such security, it must be as independent of all control *as in enforcing the condition of the bond when forfeited.*"

And on page 5:

"And may we not respond, that if the national government may tax—nay more—may declare 'invalid and of no effect' the official bond executed to the state from its own citizen selected by it to execute its own laws, may the national government not also tax the issue of a warrant from the state auditor upon the state treasurer, the signing of a pardon by the governor, his approval of a bill,

the passage of the very bill itself by the legislature, the decisions of our judges, the process of our courts? Nay, it did tax that process. This, then, 'is not a case of confidence,' but of construction of a constitution which is over and above both national and state governments."

And again on page 7:

"This power of taxation, existing alike in the general government and in the states, coextensive and concurrent, by virtue of the sovereignty of each, has, then, for each this limit: *Neither* may tax, because neither may take away, the legitimate machinery or agencies employed by the other in the exercise of its governmental powers and functions.

The principle which operates as a limitation upon the power of the state to tax the agencies and minute machinery employed by the general government to carry out its constitutional functions, must in turn equally restrain the power of Congress to tax, to trammel, or destroy, the means used by the state to perpetuate an existence as sacred under the constitution as the national life, because a constituent of that life."

In *Sayles* v. *Davis*, 22 Wis., 217, it was held that Congress could not impose a stamp duty on a tax deed executed under the laws of a state, the court saying on page 220:

"As to the omission to affix an internal revenue stamp to the tax deed under which the plaintiff claims, we think such stamp was unnecessary. * * * We are of opinion that Congress possesses no constitutional power, without the assent of the states, to tax the means or instruments devised by the states for the purpose of collecting their own revenues; and for our reasons in the support of this conclusion, we refer to the opinion of this court in the case of *Jones* v. *Estate of Keep*, 19 Wis., 369. If the writs and judicial proceedings in the courts of the state cannot be taxed by Congress, it requires no argument to show that the proceedings of the state to collect its own revenue cannot be so taxed."

In *Fifield* v. *Close*, 15 Mich., 505, the court had under consideration an act of Congress which imposed a tax on

process in the state courts. The act was held unconstitutional. The court on page 506 said:

"Having this unqualified discretionary power to tax to any extent whatever is taxable, that power may easily be extended far enough to destroy anything on which burdens may be imposed, by making those burdens so heavy as to become prohibitory. * * * The argument that such prohibitory action is improbable has no force whatever in determining the existence or non-existence of the power. There is no legitimate power possessed by any legislature which it may not lawfully carry to an extreme, where extreme action is deemed expedient by the majority of the members. And where a power of destruction has been conferred, it is always possible that it may be exercised, although it may be very improbable."

In *Warren* v. *Paul*, 22 Ind., 276, the right of the Federal government to tax the process of state courts was again denied in the following language (p. 279):

"The Federal government must be limited in its right to lay and collect stamp taxes, to the citizens and their transactions as such, or as acting in the Federal government, officially or otherwise; and cannot be laid upon and collected from individuals on their proceedings when acting not as citizens, transacting business with each other as such, but officially, or in the pursuit of rights and duties in and through state official agencies and institutions."

In *McGovern* v. *Hoesback*, 53 Pa., 176, an action of debt was instituted, and one of the defendants was arrested at the instance of the plaintiff. The court discharged this defendant upon his giving bond to the plaintiff for his appearance at the next term of court, and presenting his petition for the benefit of the insolvent laws. Subsequently the plaintiff offered the insolvent bond in evidence, and it was objected that the bond was not stamped. The court in passing on this objection, said:

"As to the second objection, that the bond was not stamped, it is sufficient to say that the stamp act exempts from duty all bonds that are made necessary in legal proceedings. It was argued that an insolvent bond is *ex voluntate* and not *ex necessitate*, but we do not think so. Arrested upon judicial process and liable to be thrown into jail, the debtor gives the bond to avert the legal effect of the process and to secure to himself his liberty. In a very high sense, this is a necessity created by legal proceedings, and such a bond may be fairly considered as falling within the exception of the stamp act."

And in *Sampson* v. *Barnard*, 98 Mass., 359, it was held that a bond given to dissolve an attachment did not require a stamp under the revenue act.

One of the latest expressions of the courts on the question is found in *Stirneman* v. *Smith*, 100 Fed. Rep., p. 600, decided by the Circuit Court of Appeals for the Eighth Circuit on February 23, 1900. It was there held that a revenue stamp need not be affixed to a notarial certificate attached to depositions to be used as evidence before a judicial tribunal. The opinion in part is as follows:

"In the proviso last quoted is found an explicit declaration on the part of Congress that it was not its purpose to impose a stamp tax on any instruments or documents which might at any time be executed for or in behalf of a state, county, town, or other municipal corporation, to enable it to perform its ordinary governmental or municipal functions; and, if there had been no such a declaration, the same result would doubtless have been reached by judicial construction. In the absence of a definite expression on that subject, it would have been inferred, we think, that Congress intended to exempt from taxation all the instrumentalities that a state or any of its municipal subdivisions might find it expedient to employ in the discharge of their ordinary governmental functions; *and that its purpose was to impose stamp taxes on those instruments only which have their origin in the private transactions of individuals and corporations, or to such instruments and writings as are executed mainly for their benefit, rather than for the benefit of the public. Car-*

*penter* v. *Snelling*, 97 Mass., 452, 458; *Green* v. *Holway*, 101 Mass., 243; *Knox* v. *Rossi* (Nev.), 57 Pac., 179, and cases there cited."

And in *Warwick* v. *Bettman*, 102 Fed. Rep., 127, decided May 5, 1900, it was held that a bond given by a notary public conditioned for the faithful discharge of the duties of his office was not required to be stamped; it being exempt under section 17 of the war revenue act. The opinion in part is as follows:

"The tax collected from the plaintiff was a tax on his right to qualify, in conformity with the law of Ohio, for the office to which he had been appointed, and was a restraint upon his duty to qualify, which might be made practically prohibitive, and was a restraint upon the state in the exercise of its function in the appointment and qualification of its officers and agents for ordinary governmental purposes, and was therefore illegal."

This case was affirmed in the Court of Appeals, Sixth Circuit, March 5, 1901. (108 Fed. Rep., 46.) The court said:

"A tax exacted upon a bond required by the state from an official as a prerequisite to the exercise of the duties of the office is in necessary legal effect a tax upon the appointee's legal right to qualify as an official of the state."

In the case at bar a tax upon a saloon bond is necessarily a tax upon the license, as the giving of the bond is a prerequisite to the granting of the license. The statute expressly provides that no license shall be granted "*unless he shall first give bond in the penal sum of* $3,000," etc. And the ordinance of Chicago says that "*no application for a license shall be considered until such bond shall have been filed.*" It will not be contended that the Federal government has the power to tax the license, therefore, it is equally clear that it is beyond the power of Congress to impose a tax upon the bond.

The expressed reason of a judgment is important. That expressed by the learned trial judge, it is submitted, is faulty. Judge Seaman admits that the argument that the bonds " 'are necessary means or instrumentalities for the exercise of the functions of state or municipal government' is not without force," and several authorities are cited to that effect. The court, however, without referring to or considering any authority, reasons that because "the business of saloon-keeping is neither a governmental "function nor essential to its administration," therefore, the bond is subject to a stamp tax. And the court adds that the bond "is the applicant's individual undertaking to obtain a personal privilege," and is, therefore, not exempt. The same reasoning would subject the bond of the notary, the bond of the public official, the bond given in a replevin or attachment suit, to stamp duties Such undertakings are given "to obtain a personal privilege," but in every instance the courts, Federal and State, have held such obligations free from tax liability. Nor is it accurate to say that such undertakings are given merely "to obtain a personal privilege"; there is much more to it than "a personal privilege." The state has the exclusive right to regulate or prohibit the sale of intoxicating liquors within its borders. The constitution of Illinois expressly gives the General Assembly "power to tax * * * liquor dealers," etc. The legislature of Illinois has availed itself of this constitutional right and has passed laws providing for the taxation of the liquor traffic. The minimum annual tax is now fixed by statute at $500. There are in Illinois, approximately, 10,000 licensed dramshop keepers. The annual tax or income from them is, therefore, $5,000,000. The state is interested in collecting this revenue. In addition

to the license fee, a bond is exacted. Is it logical to say that the taxation by the Federal government of the bond is not an interference with state functions, with state taxing powers and with the exercise by the state of police authority? Does it solve the question to say that the relation created between the licensee and the state is one of mere "personal privilege" and "is in no sense the act or obligation of the public or of a representative of the public"? A debt owing to the state or municipality is not "the act or obligation" of the state or city—and yet it cannot be taxed by the Federal government. If Congress can tax the dramshop keeper's bond fifty cents, it can make the tax $5,000. The action of such a tax would completely destroy the liquor traffic in Illinois, and deprive the state of its inherent power to regulate that traffic and to tax it, and would cut off the present annual income of some $5,000,000 which goes to municipalities in the state as a consideration for granting dramshop licenses. We submit that the reasoning of Judge Seaman does not carry conviction.

Under the internal revenue laws of the United States brewers and distillers are compelled to give a bond to the United States as a condition precedent to the issuance by the government of the requisite license. If it were within the power of the state to compel the party giving such a bond to pay a tax upon it, the state would thus be enabled to absolutely prevent the collection of the revenue and the enforcement of the government regulations concerning intoxicating liquors. If the state has the power to levy a tax of 50 cents on such a bond, then it has the power to make the tax $5,000. The fact that such a proceeding is highly improbable is no answer to this contention. It is what is *possible* under such a power and not what will *probably* be

done. As Chief Justice MARSHALL observed in *McCulloch* v. *Maryland*, *supra*, it is not a case of "*confidence.*" The fact remains that if the power to tax exists, this power involves the power to destroy and render prohibitive. The present case is the converse of that proposition and the same rules should be applicable. If it rests within the power of the Federal government to impose a tax on a bond given to the state or municipality, in compliance with the dramshop law, then the Federal government has the power to absolutely prevent, by taxation, the giving of such a bond. As already shown, the giving of a bond to the people of the State of Illinois and to the City of Chicago is a necessary prerequisite to the issuing of the license, both under the laws of Illinois and the ordinances of the City of Chicago. If Congress has the power, by means of taxation, to prevent the giving of a bond, then it follows as a necessary consequence that a license to maintain a dramshop cannot be obtained without the consent of Congress. That the sale of intoxicating liquors is a business which may dangerously affect the health, morals or well-being of the citizens cannot be controverted, and a court takes judicial notice of that fact. It is, therefore, necessary to make regulations which will protect the people from the evils of such traffic and to provide means with which to properly enforce and carry into effect these regulations. The people of the State of Illinois and the municipal authorities of Chicago have seen fit to require the giving of a bond, with two good and sufficient sureties, before a license to keep a dramshop can be obtained. The bond, therefore, is as much an instrumentality of the state as is the license. The license evidences the grant of the state to keep a dramshop—the bond is the security furnished the state against a violation

of the laws and ordinances regulating the dramshop. Without the bond, the people are without civil remedy if the dramshop keeper violates the law. The liability on the bond is a potent factor in keeping the dramshop keeper within the law. The people of the state or the municipal authorities are the express obligees in the bonds; they are executed for their benefit, and the giving of the bond should be as untrammelled and as free from restrictions as the enforcement thereof. The giving of the bond can no more be considered an individual act than the giving of a bond by a public officer, conditioned for the faithful discharge of his duties as such officer. Both are given for the benefit of the people, and both are required by law. In one case the bond is a remedy for a violation of the legal duties of the official, and in the other for the violation of the dramshop laws. There is no difference in principle.

If the power to tax such a bond exists, an exercise of that power will produce the same evil effects as a tax upon the license itself. The sale of intoxicating liquors could thus be prohibited. There is no difference between a tax on such a bond and upon a liquor license,

If, therefore, the bonds in question are means or instrumentalities of the state government employed by the state or municipality to regulate the liquor traffic under the police power, then these bonds are exempt from taxation by virtue of section 17 of the revenue act above referred to.

If the bonds are taxable, under a literal construction of section 25, schedule "A," then that part of schedule "A" which imposes a tax on the bonds in question is unconstitutional, as being an interference with the instru-

mentalities of the state necessary to carry out its sovereign powers.

It is respectfully urged that the judgment of the District Court be reversed.

T. A. Moran,
Levy Mayer,
*Attorneys for Plaintiff in Error.*